

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

ERNESTO VARELA

Plaintiff,

V.

UNITED STATES OF AMERICA,

Defendant.

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No. _____

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

ERNESTO VARELA, Plaintiff, complains of the UNITED STATES OF AMERICA,
Defendant, and would respectfully show the Court the following:

I.

This action arises under the Federal Tort Claims Act, 28 U.S.C., Section 1346(b) and 2671 et seq.

II.

Plaintiff is a resident of El Paso County, Texas and the events complained of occurred in El Paso County, Texas. Venue in the El Paso Division is appropriate based on 28 U.S.C., Section 1391(b).

III.

At all relevant times, Defendant UNITED STATES OF AMERICA, by and through its agency the Department of the Army, owned and operated a hospital known as William Beaumont Army Medical Center (hereafter referred to as WBAMC) in El Paso, Texas.

IV.

At all relevant times, Plaintiff was treated by doctors, nurses, and other medical staff, some of which are unknown to the Plaintiff, all of whom were employed as doctors, nurses and other medical assistants at WBAMC. In doing or omitting to do all of the things alleged herein, the Defendant, and agents of the Defendant, were acting within the course and scope of their employment, and with the permission and consent of the Defendant.

V.

On or about March 10, 2015, Plaintiff presented to the ER at WBAMC with complaints of rectal pain. He was evaluated and examined by a physician's assistant who diagnosed the patient with internal hemorrhoids. Plaintiff was discharged from the ER to return home and to follow up with his primary care provider.

On March 12, 2015 Plaintiff returned to the WBAMC ER with worsening rectal pain. He was diagnosed with sepsis and perirectal abscess and necrosis. He was taken emergently to surgery. As a result of extension of infection and necrosis extending into the ischio-rectal fossa and perineum, Plaintiff underwent extensive debridement, to include removal of much of the anal sphincter. A wound VAC was placed. On March 13, 2015 Plaintiff was returned to surgery for additional debridement and creation of a loop colostomy. It was determined that the colostomy would likely be permanent due to loss of tissue in the anal sphincter. On March 14, 2015 Plaintiff was returned to surgery for wound washout and wound VAC change.

VI.

Agents of the Defendant were negligent in one or more of the following:

1. Failing to diagnose the nature and extend of a perirectal and/or perianal abscess in the ER on or about March 10, 2015;

2. Failing to timely obtain a general surgery or colo-rectal consultation on March 10, 2015 prior to discharge from the ER; and
3. Failing to obtain a CBC lab result prior to discharge from the ER on March 10, 2015.

VII.

As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiff suffered the following damages, both past and future:

- a. Physical pain and mental anguish;
- b. Physical impairment;
- c. Disfigurement; and
- d. Medical expense.

By reason of the foregoing the Plaintiff has been damaged in the sum of FOUR HUNDRED FIFTY THOUSAND DOLLARS (\$450,000.00).

VIII.

Plaintiff's administrative claim was finally denied on January 4, 2019. This lawsuit is filed within six months of that date.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited and served to appear and answer, and upon final trial of this cause, Plaintiff have judgment against the Defendant in the sum of FOUR HUNDRED FIFTY DOLLARS (\$450,000.00), and for such other and further relief, both general and special, at law and in equity to which Plaintiff may be justly entitled.

Respectfully submitted,

BOYAKI LAW FIRM

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By: /s/ John Mundie

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